

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Section 68.4 of the Commission's Rules	)	WT Docket No. 01-309
Governing Hearing Aid-Compatible	)	
Telephones	)	
	)	
Petition for Temporary and Limited	)	
Waiver of Section 20.19(d)(2)	)	
of the Commission's Rules	)	

**Petition for Temporary and Limited Waiver  
of Section 20.19(d)(2) of the Commission's Rules**

Texas RSA-1 Limited Partnership d/b/a XIT Wireless ("XIT"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"),<sup>1</sup> hereby requests a limited and temporary waiver of Section 20.19(d)(2) of the Commission's rules.<sup>2</sup> XIT is fully committed to ensuring access to digital wireless services by individuals with hearing loss. However, because GSM hearing aid compatible ("HAC") handsets that meet the FCC's inductive coupling requirements ("T-rated") are not widely commercially available in sufficient quantity to allow XIT to obtain them prior to September 18, 2006, XIT is compelled to seek a waiver of the FCC's requirement that XIT offer at least two T-rated handsets, and XIT respectfully requests an extension of the September 18, 2006 deadline until January 1, 2007. Grant of the instant waiver request is consistent with the public interest as outlined below.

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<sup>1</sup> 47 C.F.R. §§ 1.3 and 1.925.

<sup>2</sup> 47 C.F.R. §§ 20.19(d)(2).

**I. XIT Is Unable to Meet the FCC's September 18, 2006 T-rated Handset Deadline Due to Factors Outside of Its Control**

XIT is a small, rural commercial mobile radio service ("CMRS") provider and must depend upon secondary market handset wholesalers for access to new handsets. XIT uses Brightpoint Inc. ("Brightpoint") and similar handset vendors who sell a wide array of handsets from different manufacturers. XIT simply does not have the market power to make deals directly with manufacturers such as Motorola and Nokia. As the Commission is aware, handset manufacturers have only recently been seeking FCC certification for T-rated handsets. These certified handsets are unavailable to most small carriers like XIT since the manufacturers favor nationwide carriers when new products are released. Brightpoint and XIT's other suppliers are unable to commit to delivering T-rated handsets in any meaningful quantity<sup>3</sup> until January 1, 2007. Although XIT is currently testing the Motorola V3i, which is T-rated, XIT does not expect to be able to order and receive enough of these handsets prior to the Commission's September 18, 2006 deadline. XIT hopes to begin offering the Motorola V3i by November 1, 2006 but cannot secure any commitment on another T-rated handset until January 1, 2007.<sup>4</sup> Accordingly, and as discussed below, XIT has no choice but to request a waiver of the Commission's Section 20.19(d)(2) HAC benchmark.

As detailed in XIT's HAC Reports on file in this docket, XIT has worked diligently since the Commission announced the modification to the exemption for wireless phones in 2003 to ensure that it would meet the Commission's HAC benchmarks. XIT has not only worked with handset distributors such as Brightpoint, but has also made repeated contact with handset manufacturers to try and determine when GSM wireless handsets would be available that meet all of the Commission's benchmarks. However, despite these efforts, XIT is merely a purchaser and

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<sup>3</sup> XIT is occasionally able to get one or two handsets at a time in order to test them.

<sup>4</sup> This commitment is dependent upon the manufacturer receiving FCC certification.

not a manufacturer of wireless handsets and therefore has little to no ability to affect the availability of HAC handsets from manufacturers.

Even Cingular Wireless, the nation's largest wireless carrier, has previously acknowledged that it "has only the ability to indirectly affect the availability of HAC phones from vendors."<sup>5</sup> Likewise, T-Mobile, the other GSM nationwide carrier, has stated that it takes an additional sixty days to obtain, test and deploy HAC compliant GSM handsets.<sup>6</sup> As a small carrier with considerably less market clout than nationwide carriers like Cingular Wireless and T-Mobile, XIT is given low priority by wireless handset vendors in fulfilling wireless handset orders.<sup>7</sup> Further, it has been XIT's experience that it can take up to four months after a handset is certified for XIT to be able to acquire and test a handset. Accordingly, XIT is requesting a temporary waiver until January 1, 2007 of Section 20.19(d)(2) of the Commission's rules.

## **II. XIT Satisfies the Relevant Standards for Waiver of the Commission's Rules**

Under Section 1.3 of its rules, the Commission may waive any provision of its rules if good cause is shown.<sup>8</sup> The Commission has previously recognized that waiver grant is in the public interest where, as here, compliance with a particular regulation is dependent on the availability of equipment from manufacturers.<sup>9</sup> In the FCC's *Fourth Memorandum Opinion and*

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<sup>5</sup> Cingular Wireless LLC Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission's Rules, WT Docket 01-309 (filed August 5, 2005) ("*Cingular Petition*").

<sup>6</sup> T-Mobile USA, Inc. Petition for Waiver, WT Docket No. 01-309, (filed August 26, 2005) ("*T-Mobile Petition*"). *See also* Reply of T-Mobile USA, Inc., WT-Docket No. 01-309 (filed September 8, 2005).

<sup>7</sup> *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14848 ¶¶ 17-21 (2002).

<sup>8</sup> 47 C.F.R. § 1.3.

<sup>9</sup> *See, e.g.,* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442 (2000) ("*E911 Fourth MO&O*"); *Telephone Number Portability, Petitions for Extension of the Deployment Schedule for Long-Term Database Methods for Local Number*

*Order* (“*E911 Fourth MO&O*”), the Commission recognized that there would be instances when “technology-related issues” or “exceptional circumstances” would cause a delay in a wireless carrier’s ability to meet a FCC benchmark. Such recognition is consistent with the Commission’s acknowledgement that “bringing a new product to market requires manufacturers to undertake a time-consuming series of complex steps.”<sup>10</sup> Manufacturers have only just overcome the technological complexities of meeting the inductive coupling standards in order to make HAC handsets available for carriers to meet the FCC’s deadlines. Many manufacturers are unlikely to have a handset certified in time to meet the Commission’s September 18, 2006 deadline. Of the manufactures who have had T-rated handsets certified, most of these handsets, as discussed above, are still unavailable to small carriers like XIT. Therefore, the requested waiver is consistent with the Commission’s recognition that compliance deadlines should be linked to the availability of manufacturer equipment.<sup>11</sup>

Section 1.925(b)(3) of the Commission’s rules sets out the general standards for determining when a waiver should be granted in Wireless Telecommunications Bureau proceedings:

The Commission may grant a request for waiver if it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly

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*Portability, Phase II*, 13 FCC Rcd 9564 (1998); *Policies and Rules Concerning Operator Service Providers*, 5 FCC Rcd 4630 (1990).

<sup>10</sup> GARMIN International, Inc., *Order on Reconsideration*, DA 01-851 at ¶ 5.

<sup>11</sup> See, e.g., *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment*, 9 FCC Rcd 1981 ¶¶ 76-77 (1994) (modifying a proposed compliance deadline to account for the unavailability of necessary equipment).

burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>12</sup>

Under both of these standards, grant of the requested waiver is warranted. Application of the Section 20.19(d)(2) handset deadline to XIT would be inequitable in light of the lack of availability of T-rated HAC compliant handsets, a factor outside of XIT's control. The unavailability of such handsets leaves XIT with no reasonable alternative but to seek a waiver.

Grant of the requested waiver is consistent with both the public interest and the underlying purpose of the Commission's HAC benchmarks set forth in Section 20.19. The Commission developed the inductive coupling requirement deadline in order to spur manufacturers to offer handsets by that date that are T-rated. The Commission's rules have recently resulted in a number of T-rated handsets becoming available on the market. Once these handsets become available to smaller carriers like XIT, they will be available nationwide from both Tier I carriers and small carriers, thus meeting the underlying purpose of the rule to make such handsets available in as timely a manner as possible.

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<sup>12</sup> 47 C.F.R. § 1.925(b)(3).

### **III. Conclusion**

Based on the foregoing, XIT requests a temporary and limited waiver of Section 20.19(d)(2) until January 1, 2007, as set forth herein. XIT's timetable for compliance is based on its experiences and contacts with manufacturers and distributors and publicly available information regarding handset availability.

Respectfully submitted,

XIT

By: \_\_\_\_\_/s/\_\_\_\_\_

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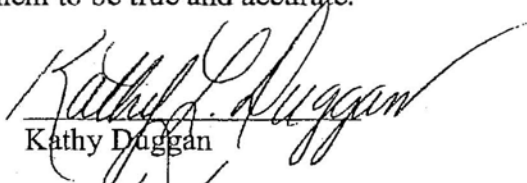
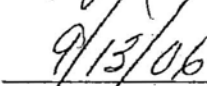
Its Attorneys

Dated: September 14, 2006

**DECLARATION OF KATHY DUGGAN**

I, Kathy Duggan, do hereby declare under penalty of perjury the following:

1. I am the Assistant General Manager of Internal Operations of Texas RSA-1 Limited Partnership d/b/a XIT Wireless.
2. I have read the following "Petition for temporary and Limited Waiver of Section 20.19(d)(2) of the Commission's Rules." I have personal knowledge of the facts set forth therein, and believe them to be true and accurate.

  
Kathy Duggan  
  
Date

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